



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 22, 1994

Mr. Philip E. McCleery
Sheehy, Lovelace & Mayfield
510 North Valley Mills Drive, Suite 500
Waco, Texas 76710

OR94-577

Dear Mr. McCleery:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28309.

The Waco Independent School District (the "school district"), which you represent, has received a request for information relating to the suspension of an elementary school principal. Specifically, the requestor seeks:

1. copies of exit interviews for all employees who left Sul Ross Elementary since Les Vela became principal.
2. copy of Vela's resume and qualifications.

You seek to withhold the requested exit interview forms from required public disclosure under section 552.103(a) of the Government Code. As you do not comment on the remainder of the requested information, we assume that the school district has or will make it available to the requestor. *See* Open Records Decision No. 363 (1983).

Section 552.103(a) of the Government Code excepts from required public disclosure information

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state

or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

For information to be excepted from public disclosure by section 552.103(a), litigation must be pending or reasonably anticipated and the information must relate to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); *see also* Open Records Decision No. 551 (1990) at 5. A surmise that litigation will occur is not enough; there must be some concrete evidence pointing to litigation. Attorney General Opinion JM-266 (1984) at 4; Open Records Decision Nos. 518 (1989) at 5; 328 (1982). This office has concluded that a reasonable likelihood of litigation exists when an attorney makes a written demand for disputed payments and promises further legal action if they are not forthcoming, *see* Open Records Decision No. 551, and when a requestor hires an attorney who then asserts an intent to sue, *see* Open Records Decision No. 555 (1990). On the other hand, the mere fact that a person, on more than one occasion, publicly states an intent to sue does not trigger section 552.103(a). Open Records Decision No. 452 (1986).

You advise us that the suspended principal has retained an attorney and that the attorney has advised you that the principal is in contact with a public interest organization to fund a lawsuit against the school district. In addition, you advise us that you have "been advised that other persons in the community and organizations are preparing to file suit against the District as a result of the Superintendent's action." Finally, you assert that the school district has had "settlement negotiations" with the attorney representing the suspended principal. You do not claim, however, that the school district has been directly threatened with litigation. Instead, you refer us only to second-hand accounts of threatened litigation that appear to be merely speculative in nature. Moreover, the fact that the school district has entered into negotiations with a disciplined employee does not, by itself, provide a basis for reasonably anticipating litigation. Indeed, negotiations are often entered into so as to avoid litigation. We conclude that you have not demonstrated that the school district may reasonably anticipate litigation. Accordingly, the school district may not withhold the submitted information under section 552.103(a) of the Government Code and must release it in its entirety.¹

¹You advise us that the school district provided school teachers an assurance of confidentiality with respect to the requested exit interview forms. We note that information is not excepted from disclosure merely because it is furnished with the expectation that it will be kept confidential. *See, e.g.*, Open Records Decision No. 180 (1977).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact this office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Enclosures: Submitted documents

Ref.: ID# 28309

cc: Ms. Teresa Talerico
Waco Tribune-Herald
P.O. Box 2588
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(w/o enclosures)